IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10722 of 2006
With
SPECIAL CIVIL APPLICATION No. 10723 of 2006
With
SPECIAL CIVIL APPLICATION No. 10725 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK C. GANDHI PRESIDENT / SECRETARY & 1 - Petitioner(s)
Versus
SHREE GITA WOOD AND SAW MILLS & 1 - Respondent(s)

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Appearance :
MR MIHIR THAKORE, SR. ADVOCATE, WITH MR MI MERCHANT for Petitioner(s) : 1 - 2.
MR MB GANDHI for Respondent(s) : 1
MR.RAJESH B SONI for Respondent(s) : 1,
MR CHINMAY M GANDHI for Respondent(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/06/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri M.B.Gandhi waives service of rule on behalf of respondent No.1 in each petition and learned AGP Shri Gori appearing on advance copy waives service of notice of rule on behalf of respondent No.2. At the joint request of the learned advocates appearing for the parties, these petitions involving similar questions of law and facts are being disposed by this common order.

2. The petitioners have challenged a common order dated 28.4.2006 passed by the Charity Commissioner. The dispute between the parties involves the question of holding of elections in petitioner No.2 Charitable Trust. It is the case of the private respondents that despite so required under the constitution of the Trust, the petitioners have not held elections of trustees, council and governing bodies of the Trust. It is stated that such elections were not being held since many years and even the electoral rolls were not updated. This prompted the private respondents to move the Charity Commissioner for appropriate directions. Thus, three miscellaneous applications were consolidated and disposed of by a common order dated 28.4.2006. It is this order which has given rise to these petitions at the hands of the Trust.

3. At the outset, it may be stated that the petitioners

are not averse to carrying out elections as per the provisions made in the constitution of the Trust. It is clarified by the learned Senior Advocate Shri Thakore appearing for the petitioners with briefing advocate Shri Merchant that the petitioners also do not oppose the supervision of the representative of the Charity Commissioner as provided in the impugned order. However, preparation of electoral rolls and conduct of the election cannot be made subject to scrutiny and review by such a representative. He submitted that this stand of the petitioners is without prejudice to their contentions that it is not open for the Charity Commissioner to provide any kind of supervision or adjudication at hands of his representative.

4. Learned advocate Shri Gandhi appearing for the private respondents submitted that the said respondents are interested in ensuring free and fair elections in the said bodies of the Trust. He submitted that since many years, the Trust had defaulted in holding the elections. It was, therefore, that the respondents had to take out proceedings before the Charity Commissioner. In short, he supported the order passed by the Charity Commissioner. He, however, submitted under instructions that in the interest of expeditious

holding of the elections, the said respondents would agree to minimising the role of the representative of the Charity Commissioner and if the Court so provides would accept such directions that the preparation of electoral rolls and conduct of the election may not be made subject to the scrutiny and decision at the hands of the representative of the Charity Commissioner.

5. Learned AGP Shri Gori submitted that essentially it is a dispute between the Trust and its agitating members. However, the Charity Commissioner had committed no error in giving directions in exercise of powers under section 41(A) of the Bombay Public Trusts Act.

6. After having heard the learned advocates appearing for the parties at considerable length, there was a degree of consensus to resolve the dispute. There is no dispute between the parties that holding of a free and fair election to the bodies of the Trust is the paramount consideration. However, the petitioners desire that at an interim stage, the process of preparation of the electoral rolls and conduct of the election should not be subject to any review by any of the authorities from the Office of the Charity Commissioner. Both sides though had sought to rely on their respective interpretation of

section 41(A) of the Bombay Public Trusts Act, the issues have got virtually narrowed down and the appearing parties have agreed that the order passed by the Charity Commissioner in this regard may be maintained substantially by upholding the directions for holding the elections, however, the order in so far as the same permits the officer of the Charity Commissioner to reconsider the preparation of the electoral rolls and conduct of the election may be suitably modified in the interest of expeditious conduct of the elections.

7. Under the circumstances, these petitions are disposed by upholding the directions issued by the Charity Commissioner with respect to the conduct of the elections of the above-mentioned bodies of the petitioner-Trust. However, direction contained in para (4)(c) of the operative portion of the order of the Charity Commissioner is modified by providing that the preparation of the electoral rolls and conduct of the election by the petitioners though will be supervised by the Deputy Charity Commissioner (Administration), direction that such preparation of electoral roll will be subject to the approval of the said authority shall stand deleted. It is further clarified that for all further steps for conduct of the election also, the role of the

said authority will be limited to that of supervising the process. It is further directed that the petitioners shall publish a fresh provisional voters list and invite objections from the interested members as per the constitution of the Trust and shall also dispose of such objections that may be received in this regard.

8. Some time has been consumed in disposal of the litigation. Therefore, the time-frame provided by the Charity Commissioner in the impugned order shall have to be revised.

9. The petitioners shall publish a provisional voters list within a period of 15 days from today. Intending objectors shall be given a further period of 15 days thereafter to raise their objections to the provisional voters list. Thereafter, the petitioner shall have another period of 15 days to dispose of the objections and finalise the voters list. Upon finalization of the voters list as directed above, the petitioner Trust shall hold election for all the three bodies within a period of two months of the finalization of the electoral rolls.

10. Learned advocate Shri Gandhi appearing for the private respondents submitted that it may be kept open for the aggrieved persons to challenge the

voters list in accordance with law. I have expressed no opinion on the nature of remedy that may be available to such persons and nothing stated hereinabove will be construed as to expressing any opinion of the Court either vesting or taking away the remedy of such persons.

11. With the above observations and directions the petitions are disposed of. Rule is made absolute to the above limited extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)